

AGREEMENT NUMBER

**[Agreement number]**

1. In this agreement ("Agreement"), the term "Contractor" refers to **[Contractor name]**, and the term "Court" refers to the **Superior Court of California, County of Tulare**
2. This Agreement is effective as of **[Date]** ("Effective Date") and expires on **[Date]** ("Expiration Date").  
This Agreement includes one or more options to extend through **[Date or "N/A"]**.
3. The maximum amount the Court may pay Contractor under this Agreement is \$**[Dollar amount]** (the "Contract Amount"). The maximum amount the Court may pay Contractor is (i) \$**[Dollar amount]** during the Initial Term, and (ii) \$**[Dollar amount]** during the Option Term(s).
4. The purpose or title of this Agreement is: **Exterior Window Cleaning Services – SCJC**

*The purpose or title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of this Agreement.*



5. The parties agree that this Agreement, made up of this coversheet, the appendixes listed below, and any attachments, contains the parties' entire understanding related to the subject matter of this Agreement, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.

Appendix A –Services

Appendix B – Payment Provisions

Appendix C – General Provisions

Appendix D – Defined Terms

COURT'S SIGNATURE	CONTRACTOR'S SIGNATURE
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE</b>	CONTRACTOR'S NAME (if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc., and the state or territory where Contractor is organized) <b>[CONTRACTOR NAME]</b>
BY (Authorized Signature) 	BY (Authorized Signature) 
PRINTED NAME AND TITLE OF PERSON SIGNING <b>[Name and title]</b>	PRINTED NAME AND TITLE OF PERSON SIGNING <b>[Name and title]</b>
DATE EXECUTED <b>[Date]</b>	DATE EXECUTED <b>[Date]</b>
ADDRESS <b>221 S. MOONEY BLVD. ROOM 303 VISALIA, CA 93291</b>	ADDRESS <b>[Address]</b>

## APPENDIX A –SERVICES

### 1. Background and Purpose.

- The Superior Court of California, County of Tulare (the Court) needs exterior window cleaning services for it South county Justice Center (SCJC) located at 300 E. Olive Ave., Porterville, CA 93257

### 2. Services.

#### 2.1 Description of Services. Contractor shall perform the following services (“Services”):

- Clean all exterior windows at the Court’s SCJC in Porterville, CA on a six (6) month to nine (9) month schedule;

### 3. Project Staff.

**3.1 Court Project Manager.** The Court’s project manager is: **Ed Jones**. The Court may change its project manager at any time upon notice to Contractor without need for an amendment to this Agreement.

**3.2 Contractor Project Manager.** Contractor’s project manager is: **[Insert name]**. The Contractor Project Manager shall serve, from the Effective Date, as the Contractor Project Manager and primary Contractor representative under this Agreement. The Contractor Project Manager shall (i) have overall responsibility for managing and coordinating the performance of Contractor’s obligations under this Agreement, including the performance of all subcontractors; and (ii) be authorized to act for and bind Contractor and subcontractors in connection with all aspects of this Agreement. The Contractor Project Manager shall respond promptly and fully to all inquiries from the Court Project Manager. Subject to written approval by the Court, Contractor may change its project manager without need for an amendment to this Agreement.

**3.3 Contractor Key Personnel.** The Court reserves the right to interview and approve proposed Contractor Key Personnel prior to their assignment to the Court. Contractor shall not replace or reassign any Contractor Key Personnel unless the Court consents in advance in writing or such Contractor Key Personnel (i) voluntarily resigns or takes a leave of absence from Contractor, (ii) has his/her employment, professional or other for-hire relationship terminated by Contractor, (iii) fails to perform his or her duties and responsibilities pursuant to this Agreement, or (iv) dies or is unable to work due to his or her disability. If Contractor needs to replace a Contractor Key Personnel for any of the foregoing reasons, Contractor shall (1) notify the Court promptly, (2) provide resumes for proposed replacement Contractor Key Personnel within two (2) Court business days after so notifying the Court, and (3) be responsible for all costs and expenses associated with any replacement of any Contractor Key Personnel member (including, without limitation, any costs and expenses associated with training, project orientation or knowledge transfer reasonably required for replacement personnel to provide the applicable Service).

### 4. Contractor’s Key Personnel and Conversion Fee

#### 4.1 Key Personnel

Key Personnel Title	Name
_____	_____

**4.2 Conversion Fee.** The parties have agreed that in the event the Court elects to hire Contractor's Key Personnel named in this Agreement as an employee of the Court anytime after the Expiration Date, Contractor will not invoice the Court for a conversion fee.

**5. Time and Holidays**

- 5.1 Time.** Contractor will begin to perform the requested Services March 1, 2018 through February 28, 2019. Contractor's Key Personnel named in this Agreement will be available to provide Services during a 40 hour work week, unless additional hours are approved by the Court's Executive Officer or designee. Contractor will consult with the Court's Executive Officer prior to scheduling time off during the 40 hour work week.
- 5.2 Holidays.** The Court is not open on the holidays listed below. Except as may be directed by the Court, Contractor will not perform Work on the designated holidays and Court will not be invoiced for Work on the designated holidays.

Holiday
New Year's Day
Dr. Martin Luther King Jr. Day
Lincoln Day
President's Day
Cesar Chavez Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day

**6. Work Location and Court Responsibilities.**

- 6.1 Location.** As directed by the Court, Work will be performed at the Court's locations indicated below:  
300 E. Olive Ave., Porterville, CA 93257

- 6.2 Court Responsibilities.** The Court will be responsible to provide the following for Contractor's Key Personnel named in this Agreement.

- Access to all necessary areas for successful completion of the Services.
- A primary point of contact.

- 7. Resources.** Except as specifically stated herein, Contractor is responsible for providing any and all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for performance of the Services and to meet Contractor's obligations under this Agreement.
- 8. Acceptance Criteria.** The Services and Deliverables must meet the following acceptance criteria or the Court may reject the applicable Services or Deliverables that:

(i) fail to meet applicable acceptance criteria,

(ii) are not warranted,

(iii) are performed or delivered late (without prior consent by the Court). If the Court rejects any Service or Deliverable (other than for late performance or delivery), Contractor shall modify such rejected Service or Deliverable at no expense to the Court to correct the relevant deficiencies and shall redeliver such Service or Deliverable to the Court within ten (10) business days after the Court's rejection, unless otherwise agreed in writing by the Court.

- 9. Service Warranties.** Contractor warrants that:

(i) The Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services;

(ii) Contractor will perform the Services in the most cost-effective manner consistent with the required level of quality and performance. Contractor warrants that each Deliverable will conform to and perform in accordance with the requirements of this Agreement and all applicable specifications and documentation. For each such Deliverable, the foregoing warranty shall commence for such Deliverable upon the Court's acceptance of such Deliverable, and shall continue for a period of one (1) year following acceptance. In the event any Deliverable does not conform to the foregoing warranty, Contractor shall promptly correct all nonconformities to the satisfaction of the Court.

**10. Commencement of Performance.** This Agreement is of no force and effect until signed by both parties. Any commencement of performance prior to final signature shall be at Contractor's own risk.

**11. Stop Work Orders.**

**11.1** The Court may, at any time, by Notice to Contractor, require Contractor to stop all or any part of the Services for a period up to ninety (90) days after the Notice is delivered to Contractor, and for any further period to which the parties may agree ("Stop Work Order"). The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Services covered by the Stop Work Order during the period of stoppage. Within ninety (90) days after a Stop Work Order is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, the Court shall either (i) cancel the Stop Work Order; or (ii) terminate the Services covered by the Stop Work Order as provided for in this Agreement.

**11.2** If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume the performance of Services. The Court shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:

- A.** The Stop Work Order results in an increase in the time required for, or in Contractor's cost properly allocable to the performance of any part of this Agreement; and
- B.** Contractor requests an equitable adjustment within thirty (30) days after the end of the period of stoppage; however, if the Court decides the facts justify the action, the Court may receive and act upon a proposal submitted at any time before final payment under this Agreement.

**11.3** The Court shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this provision.

**12. Acceptance or Rejection.** All Services and Deliverables are subject to acceptance by the Court. The Court may reject any Services or Deliverables that (i) fail to meet applicable

acceptance criteria, (ii) are not as warranted, or (iii) are performed or delivered late (without prior consent by the Court). If the Court rejects any Service or Deliverable (other than for late performance or delivery), Contractor shall modify such rejected Service or Deliverable at no expense to the Court to correct the relevant deficiencies and shall redeliver such Service or Deliverable to the Court within ten (10) business days after the Court's rejection, unless otherwise agreed in writing by the Court. Thereafter, the parties shall repeat the process set forth in this section until the Court accepts such corrected Service or Deliverable. The Court may terminate that portion of this Agreement which relates to a rejected Service or Deliverable at no expense to the Court if the Court rejects that Service or Deliverable (i) for late performance or delivery, or (ii) on at least two (2) occasions for other deficiencies.

**ATTACHMENT 1  
ACCEPTANCE AND SIGNOFF FORM**

Description of Services or Deliverables provided by Contractor: \_\_\_\_\_

**Date submitted to the Court:**\_\_\_\_\_

The Services or Deliverables are:

1) Submitted on time: ☐ yes ☐ no. If no, please note length of delay and reasons.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2) Complete: ☐ yes ☐ no. If no, please identify incomplete aspects of the Services or Deliverables.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3) Technically accurate: ☐ yes ☐ no. If no, please note corrections required.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please note level of satisfaction:

☐ Poor ☐ Fair ☐ Good ☐ Very Good ☐ Excellent

Comments, if any:

\_\_\_\_\_  
\_\_\_\_\_

☐ The Services or Deliverables listed above are accepted.

☐ The Services or Deliverables listed above are rejected.

Name:\_\_\_\_\_

Title:\_\_\_\_\_

Date:\_\_\_\_\_

END OF ATTACHMENT

## APPENDIX B – PAYMENT PROVISIONS

1. **General.** Subject to the terms of this Agreement, Contractor shall invoice the Court, and the Court shall compensate Contractor, as set forth in this Appendix B. The amounts specified in this Appendix shall be the total and complete compensation to be paid to Contractor for its performance under this Agreement. Contractor shall bear, and the Court shall have no obligation to pay or reimburse Contractor for, any and all other fees, costs, profits, taxes or expenses of any nature which Contractor incurs.
2. **Compensation for Services.**
  - 3.1 **Amount.** Contractor will invoice the following amounts for Services or Deliverables that the Court has accepted:
    - \_\_\_\_\_
    - \_\_\_\_\_
  - 3.2 **Withholding.** When making a payment tied to the acceptance of Deliverables, the Court shall have the right to withhold ten percent (10%) of each such payment until the Court accepts the final Deliverable.
  - 3.3 **No Advance Payment.** The Court will not make any advance payment for Services.
3. **Expenses.** Except as set forth in this section, no expenses relating to the Services or Deliverables shall be reimbursed by the Court.
  - 4.1 **Allowable Expenses.** Contractor may submit for reimbursement, without mark-up, only the following categories of expense:
    - TBD
  - 4.2 **Limit on Travel Expenses.** If travel expenses are allowed under section 4.1 above: (i) all travel is subject to written preauthorization and approval by the Court, and (ii) all travel expenses are limited to the maximum amounts set forth in the Court's travel expense policy.
  - 4.3 **Expense Limit.** Contractor shall not invoice the Court, and the Court has no obligation to reimburse Contractor, for expenses of any type that exceed in the aggregate the amount of: \$[Dollar amount] for the Initial Term and \$[Dollar amount] for the Option Term.
  - 4.4 **Required Certification.** Contractor must include with any request for reimbursement from the Court a certification that Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Contractor incurs costs or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from the Court was sought for these costs, and Contractor will provide those records to the Attorney General upon request.

**5.1 Invoicing and Payment**

- 5.2 Invoicing.** Contractor shall submit invoices to the Court in arrears no more frequently than monthly. All invoices will be sent to the address listed below. Each invoice must be printed on Contractor's standard printed bill form, and must include at a minimum (i) the Agreement number, (ii) Vendor's name and address, (iii) the nature of the invoiced charge, (iv) the total invoiced amount, and (v) such detail as is reasonably necessary to permit the Court to evaluate the Services performed, if any, including without limitation the number of hours worked and the applicable hourly rate. Contractor shall adhere to reasonable billing guidelines issued by the Court from time to time.

Superior Court of California, County of Tulare  
Attention: N. Soboleski, CFO  
221 S. Mooney Blvd.  
Room 303  
Visalia, CA 93291

- 5.3 Payment.** The Court will pay each correct, itemized invoice received from Contractor after acceptance of the applicable Services or Deliverables, in accordance with the terms of this Agreement. Payment is due thirty (30) days from receipt of a correct, itemized invoice.

(A) Notwithstanding any provision in this Agreement to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor's obligations under this Agreement.

(B) Amounts owed to the Court due to rejections of Services or Deliverables or discrepancies in an invoice will be, at the Court's option, fully credited against future invoices payable by the Court, or paid by Contractor within thirty (30) days from Contractor's receipt of a debit memo or other written request for payment by the Court. The Court has the right at any time to set off any amount owing from Contractor to the Court against any amount payable by the Court pursuant to this Agreement or any other transaction or occurrence.

- 5.4 No Implied Acceptance.** Payment does not imply acceptance of Contractor's invoice, Services, or Deliverables. Contractor shall immediately refund any payment made in error. The Court shall have the right at any time to set off any amount owing from Contractor to the Court against any amount payable by the Court to Contractor under this Agreement.

- 4. Taxes.** Unless otherwise required by law, the Court is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The Court shall only pay for any state or local sales, service, use, or similar taxes imposed on the Services rendered or equipment, parts or software supplied to the Court pursuant to this Agreement.



## APPENDIX C – GENERAL PROVISIONS

### 1.0 Provisions Applicable to Services

- 1.1 **Qualifications.** Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If the Court is dissatisfied with any of Contractor's personnel, for any or no reason, Contractor shall replace them with qualified personnel.
- 1.2 **Turnover.** Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to perform Services.
- 1.3 **Background Checks.** Contractor shall cooperate with the Court if the Court wishes to perform any background checks on Contractor's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the Court may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the Court of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the Court and performed by Contractor. Contractor shall ensure that the following persons are not assigned to perform services for the Court: (a) any person refusing to undergo such background checks, and (b) any person whose background check results are unacceptable to Contractor or that, after disclosure to the Court, the Court advises Contractor that the person is unacceptable to the Court.

### 2.0 Contractor Certification Clauses. Contractor certifies that the following representations and warranties are true. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the Court if any representation and warranty becomes untrue. Contractor represents and warrants as follows:

- 2.1 **Authority.** Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement.
- 2.2 **Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the Court.
- 2.3 **No Gratuities.** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- 2.4 **No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under PCC 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- 2.5 **No Interference with Other Contracts.** To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.
- 2.6 **No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform the Services.
- 2.7 **Compliance with Laws Generally.** Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services.

- 2.8 Drug Free Workplace.** Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.
- 2.9 No Harassment.** Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.
- 2.10 Noninfringement.** The Services, Deliverables, and Contractor's performance under this Agreement do not infringe, or constitute an infringement, misappropriation or violation of, any third party's intellectual property right.
- 2.11 Nondiscrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination.
- 2.12 National Labor Relations Board Orders.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

### 3.0 Insurance

- 3.1 General Requirements for Contractor's insurance that is required during the term of the Agreement:**
- A.** Contractor shall maintain the required insurance for its operations with an insurance company or companies that are rated "A- VII" or higher by A.M. Best's key rating guide and authorized to do business in the State of California. If Contractor is a public agency, the insurance may be provided through a joint power authority formed for the purpose of jointly self-insuring the cost of claims and insurance costs.
  - B.** For all insurance policies required by this section 3.0, Contractor shall declare any deductible or self-insured retention (SIR). Any deductible or SIR shall be clearly stated on the appropriate certificate of insurance.
  - C.** If self-insured, Contractor agrees to administer its self-insurance program in a commercially reasonable manner to ensure the availability of funds to cover losses required to be insured under the terms of this section 3.0.
  - D.** Contractor, prior to commencement of the Services, shall provide the Court with certificates of insurance and signed insurance policy endorsements, on forms acceptable to the Court, as evidence that the required insurance is in effect. Where applicable, each certificate of insurance and signed insurance policy endorsement shall specifically provide verification that the State of California, the Judicial Council of California, and the Superior Court of California, County of Tulare, and their respective elected and appointed officials, judges, officers, and employees have been added as additional insureds on the insurance policy being referenced.
  - E.** The Certificates of Insurance shall be addressed as follows:

**Superior Court of California, County of Tulare  
221 S. Mooney Blvd., Room 303  
Visalia, CA 93291**

- F.** All insurance policies required under this section 3.0 shall be in force until the end of the term of this Agreement or completion of the Services, whichever comes later.
- G.** If the insurance expires during the term of the Agreement, Contractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance and signed insurance policy endorsements, or Contractor may be declared in breach of this Agreement. The Court reserves the right to withhold all progress and retention payments until the breach is cured to the satisfaction of the Court. Contractor must provide renewal insurance certificates and signed policy endorsements to the Court at least ten (10) days following the expiration of the previous insurance certificates and signed policy endorsements.
- H.** In the event Contractor fails to keep in effect the specified insurance coverage, the Court may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
- I.** The Commercial General Liability and Automobile Liability insurance required by the “Insurance Requirements” herein below, as well as any Excess/Umbrella Liability insurance that Contractor maintains in compliance with the terms of this section 3.0 shall be endorsed to include the State of California, the Judicial Council of California, and the Superior Court of California, County of Tulare, and their respective elected and appointed officials, judges, officers, and employees as additional insureds, but only with respect to liability assumed by Contractor under the terms of this Agreement or liability arising out of performance of the Services.
- J.** Contractor, and any insurer (by policy endorsement) providing insurance required under the terms of this section 3.0, shall waive any right of recovery or subrogation it may have against the State of California, the Judicial Council of California, and the Superior Court of California, County of Tulare, and their respective elected and appointed officials, judges, officers, and employees for direct physical loss or damage to the work, or for any liability arising out of the Services performed by Contractor under this Agreement.
- K.** All insurance policies required under this section 3.0 shall contain a provision that coverage will not be materially changed or cancelled without thirty (30) days’ prior written notice to the Court. Notice to the Court of cancellation or material change is the responsibility of the Contractor.
- L.** Contractor shall be responsible for and may not recover from the State of California, the Judicial Council of California, or the Superior Court of California, County of Tulare any deductible or self-insured retention that is connected to the insurance required under this section 3.0.
- M.** The insurance required under this section 3.0 shall be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the State of California, the Judicial Council of California, or the Superior Court of California, County of Tulare.
- N.** The cost of all insurance required by this section 3.0 is the sole responsibility of Contractor, and is a component part of Contractor’s agreed compensation.
- O.** Contractor shall require insurance from subcontractors and their sub-subcontractors with substantially the same terms and conditions as required of Contractor under “Insurance Requirements” herein below and with limits of liability, which in the opinion of

Contractor are sufficient to protect the interests of Contractor, State of California, the Judicial Council of California, and the Superior Court of California County of Tulare.

**3.2 Insurance Requirements:** From the beginning of the performance of the Services, the Contractor shall maintain, at a minimum and in full force and effect, the following insurance:

- A. Commercial General Liability:** Commercial General Liability insurance (and if required Excess/Umbrella Liability insurance) for all of its operations written on an occurrence form with limits of not less than \$1 million per occurrence and a \$1 million annual aggregate limit of liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy shall not include exclusion for loss resulting from explosion, collapse, or underground perils. This insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought subject to the insurance policy limit of liability.
- B. Commercial Automobile Liability:** If one or more automobiles is used in the performance of the Services, Commercial Automobile Liability insurance covering liability arising out of the operation, use, loading, or unloading of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with the Services, with limits of not less than \$1 million combined single limit per accident.
- C. Workers' Compensation and Employers Liability:** Statutory Workers' Compensation insurance for all of the employees who are engaged in the Services, including special coverage extensions where applicable and Employers Liability insurance with limits not less than \$500,000 for each accident, \$500,000 as the aggregate disease policy limit, and \$500,000 as the disease limit for each employee.
- D. Professional Liability Insurance:** Professional Liability insurance covering Contractor's acts, errors, and omissions committed or alleged to have been committed, which arise out of rendering or failure to render the Services required under this Agreement. The policy shall provide limits of not less than \$1 million per claim or per occurrence and \$1 million annual aggregate. If the policy is written on a "claims made" form, Contractor shall continue the coverage, either through policy renewals or the purchase of an extended discovery period, if such extended discovery period is available, for not less than one (1) year from the date of the completion of the Services. The retroactive date or "prior acts date" of any such "claims made" policy must be no later than the date that Services commence.

**4.0 Indemnity.** Contractor will defend (with counsel satisfactory to the Court or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with (i) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (ii) a breach of a representation, warranty, or other provision of this Agreement, and (iii) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any Services or Deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the Court's prior written consent, which consent shall not be unreasonably withheld; and the Court shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and

expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

**5.0 Option Term.** Unless section 2 of the Coversheet indicates that an Option Term is not applicable, the Court may, at its sole option, extend this Agreement for a single one-year term, at the end of which Option Term this Agreement shall expire. In order to exercise this Option Term, the Court must send Notice to Contractor at least thirty (30) days prior to the end of the Initial Term. The exercise of an Option Term will be effective without Contractor's signature.

**6.0 Tax Delinquency.** Contractor must provide notice to the Court immediately if Contractor has reason to believe it may be placed on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The Court may terminate this Agreement immediately "for cause" pursuant to section 7.2 below if (i) Contractor fails to provide the notice required above, or (ii) Contractor is included on either list mentioned above.

## **7.0 Termination**

**7.1 Termination for Convenience.** The Court may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the Court, Contractor shall immediately stop Services as specified in the Notice.

**7.2 Termination for Cause.** The Court may terminate this Agreement, in whole or in part, immediately "for cause" if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the Court, is not capable of being cured within this cure period); (ii) Contractor or Contractor's creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.

**7.3 Termination upon Death.** This entire Agreement will terminate immediately without further action of the parties upon the death of a natural person who is a party to this Agreement, or a general partner of a partnership that is a party to this Agreement.

**7.4 Termination for Changes in Budget or Law.** The Court's payment obligations under this Agreement are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. The Court may terminate this Agreement or limit Contractor's Services (and reduce proportionately Contractor's fees) upon Notice to Contractor without prejudice to any right or remedy of the Court if: (i) expected or actual funding to compensate Contractor is withdrawn, reduced or limited; or (ii) the Court determines that Contractor's performance under this Agreement has become infeasible due to changes in applicable laws.

## **7.5 Rights and Remedies of the Court.**

**A. Nonexclusive Remedies.** All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the Court immediately if Contractor is in default, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement. If Contractor is in default, the Court may do any of the following: (i) withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial

Branch Entity and Contractor; (ii) require Contractor to enter into nonbinding mediation; (iii) exercise, following Notice, the Court's right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.

**B. *Replacement.*** If the Court terminates this Agreement in whole or in part for cause, the Court may acquire from third parties, under the terms and in the manner the Court considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the Court for any excess costs for those goods or services. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the Court for such goods and services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the Court. Contractor shall continue any Services not terminated hereunder.

**C. *Delivery of Materials.*** In the event of any expiration or termination of this Agreement, Contractor shall promptly provide the Court with all originals and copies of the Deliverables, including any partially-completed Deliverables-related work product or materials, and any Court-provided materials in its possession, custody, or control. In the event of any termination of this Agreement, the Court shall not be liable to Contractor for compensation or damages incurred as a result of such termination; provided that if the Court's termination is not for cause, the Court shall pay any fees due under this Agreement for Services performed or Deliverables completed and accepted as of the date of the Court's termination Notice.

**7.6 *Survival.*** Termination or expiration of this Agreement shall not affect the rights and obligations of the parties which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including any section of this Agreement that states it shall survive such termination or expiration.

**8.0 *Assignment and Subcontracting.*** Contractor may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the Court. Consent may be withheld for any reason or no reason. The Court may withdraw its approval of a subcontractor if the Court determines in good faith that the subcontractor is, or will be, unable to effectively perform its responsibilities. If the Court rejects any proposed subcontractor in writing, Contractor will assume the proposed subcontractor's responsibilities. No subcontracting shall release Contractor from its responsibility for performance of its obligations under this Agreement. Contractor shall remain fully responsible for the performance of subcontractors hereunder, including, without limitation, all work and activities of subcontractors providing Services to Contractor in connection with performance of this Agreement. Contractor shall be the sole point of contact with subcontractors under this Agreement, and Contractor shall be solely responsible for subcontractors, including, without limitation, payment of any and all charges resulting from any subcontract. The Court's consent to any subcontracting or delegation of Contractor's obligations will take effect only if there is a written agreement with between Contractor and the subcontractor, stating that the Contractor and subcontractor: (i) are jointly and severally liable to the Court for performing the duties in this Agreement; (ii) affirm the rights granted in this Agreement to the Court; (iii) make the representations and warranties made by the Contractor in this Agreement; (iv) appoint the Court an intended third party beneficiary; and (v) shall comply with and be subject to the terms of this Agreement. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.



**9.0 Notices.** Notices must be sent to the following address and recipient:

If to Contractor:	If to the Court:
N. Soboleski, CFO 221 S. Mooney Blvd. Room 303 Visalia, CA 93291	<u>[name, title, address]</u>

Either party may change its address for Notices by giving the other party Notice of the new address in accordance with this section. Notices will be considered to have been given at the time of actual delivery in person, three (3) days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

**10.0 Provisions Applicable to Certain Agreements.** The provisions in this section are *applicable only to the types of orders specified in the first sentence of each subsection*. If this Agreement is not of the type described in the first sentence of a subsection, then that subsection does not apply to the Agreement.

**10.1 Union Activities Restrictions.** *If the Contract Amount is over \$50,000, this section is applicable.* Contractor agrees that no Court funds received under this Agreement will be used to assist, promote or deter union organizing during the Term. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no Court funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.

**10.2 Federal Funding Requirements.** *If this Agreement is funded in whole or in part by the federal government, this section is applicable.* It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made. This Agreement is valid and enforceable only if sufficient funds are made available to the Court by the United State Government for the fiscal year in which they are due and consistent with any stated programmatic purpose, and this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, this Agreement shall be deemed amended without any further action of the parties to reflect any reduction in funds. The Court may invalidate this Agreement under the termination for convenience or cancellation clause (providing for no more than thirty (30) days' Notice of termination or cancellation), or amend this Agreement to reflect any reduction in funds.

**10.3 DVBE Commitment.** *This section is applicable if Contractor received a disabled veteran business enterprise ("DVBE") incentive in connection with this Agreement.* Contractor's failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement: (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the Court approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must within sixty (60) days of receiving final payment under this Agreement certify in a report to the Court: (1) the total amount of money Contractor received under the Agreement; (2) the name and address of each DVBE

subcontractor to which Contractor subcontracted work in connection with the Agreement; (3) the amount each DVBE subcontractor received from Contractor in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

- 10.4 Antitrust Claims.** *If this Agreement resulted from a competitive solicitation, this section is applicable.* Contractor shall assign to the Court all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the Court. Such assignment shall be made and become effective at the time the Court tenders final payment to Contractor. If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Court any portion of the recovery, including treble damages, attributable to overcharges that were paid by Contractor but were not paid by the Court as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the Court shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the Court has not been injured thereby, or (b) the Court declines to file a court action for the cause of action.
- 10.5 Good Standing.** *If Contractor is a corporation, limited liability company, or limited partnership, and this Agreement is performed in whole or in part in California, this section is applicable.* Contractor is, and will remain for the Term, qualified to do business and in good standing in California.
- 10.6 Janitorial Services or Building Maintenance Services.** *If this Agreement is for janitorial or building maintenance services, this section is applicable.* If this Agreement requires Contractor to perform Services at a new site, Contractor shall retain for sixty (60) days all employees currently employed at that site by any previous contractor that performed the same services at the site. Contractor shall provide upon request information sufficient to identify employees providing janitorial or building maintenance services at each site and to make the necessary notifications required under Labor Code section 1060 et seq.
- 10.7 Small Business Preference Commitment.** *This section is applicable if Contractor received a small business preference in connection with this Agreement.* Contractor's failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. Contractor must within sixty (60) days of receiving final payment under this Agreement report to the Court the actual percentage of small/micro business participation that was achieved. If Contractor is a nonprofit veteran service agency ("NVSA"), Contractor must employ veterans receiving services from the NVSA for not less than 75 percent (75%) of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement.

## **11.0 Miscellaneous Provisions.**

- 11.1 Independent Contractor.** Contractor is an independent contractor to the Court. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the Court. Contractor has no authority to bind or incur any obligation on behalf of the Court. If any governmental entity concludes that Contractor is not an independent contractor, the Court may terminate this Agreement immediately upon Notice.



- 11.2 GAAP Compliance.** Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.
- 11.3 Audit.** Contractor must allow the Court or its designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement, and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement, Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the Court five percent (5%) or more during the time period subject to audit, Contractor must reimburse the Court in an amount equal to the cost of such audit. This Agreement is subject to examinations and audit by the State Auditor for a period three (3) years after final payment.
- 11.4 Licenses and Permits.** Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services. Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law.
- 11.5 Confidential Information.** During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the Court's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. The Court owns all right, title and interest in the Confidential Information. Contractor will notify the Court promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the Court to protect such Confidential Information. Upon the Court's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the Court or, if so directed by the Court, destroy all Confidential Information (in every form and medium), and (b) certify to the Court in writing that Contractor has fully complied with the foregoing obligations. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the Court shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.
- 11.6 Ownership of Deliverables.** Unless otherwise agreed in this Agreement, Contractor hereby assigns to the Court ownership of all Deliverables, any partially-completed Deliverables, and related work product or materials. Contractor agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Contractor shall not publish or reproduce any Deliverable in whole or part, in any manner or form, or authorize others to do so, without the written consent of the Court.
- 11.7 Publicity.** Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the Court.

- 11.8 Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.
- 11.9 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
- 11.10 Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the Court. A waiver of enforcement of any of this Agreement's terms or conditions by the Court is effective only if expressly agreed in writing by a duly authorized officer of the Court. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 11.11 Force Majeure.** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by a force majeure. Force majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible.
- 11.12 Follow-On Contracting.** No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, procuring goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.
- 11.13 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 11.14 Headings; Interpretation.** All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word "including" means "including, without limitation." Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.
- 11.15 Time of the Essence.** Time is of the essence in Contractor's performance under this Agreement.
- 11.16 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

## APPENDIX D – DEFINED TERMS

As used in this Agreement, the following terms have the indicated meanings:

**“Agreement”** is defined on the Coversheet.

**“Contractor”** is defined on the Coversheet.

**“Confidential Information”** means: (i) any information related to the business or operations of the Court, including information relating to the Court’s personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the Court (and proprietary information of third parties provided to Contractor) which is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Contractor demonstrates to the Court’s satisfaction that: (a) Contractor lawfully knew prior to the Court’s first disclosure to Contractor, (b) a third party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) is, or through no fault of Contractor has become, generally available to the public.

**“Consulting Services”** refers to the services performed under “Consulting Services Agreements,” which are defined in PCC 10335.5, substantially, as contracts that: (i) are of an advisory nature; (ii) provide a recommended course of action or personal expertise; (iii) have an end product that is basically a transmittal of information, either written or oral, that is related to the governmental functions of state agency administration and management and program management or innovation; and (iv) are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type.

**“Contract Amount”** is defined on the Coversheet.

**“Coversheet”** refers to the first page of this Agreement.

**“Deliverables”** is defined in Appendix A.

**“Effective Date”** is defined on the Coversheet.

**“Expiration Date”** is the later of (i) the day so designated on the Coversheet, and (ii) the last day of any Option Term.

**“Initial Term”** is the period commencing on the Effective Date and ending on the Expiration Date designated on the Coversheet.

**“Court” is defined on the Coversheet.**

**“Judicial Branch Entity”** or **“Judicial Branch Entities”** means any California superior or appellate court, the Judicial Council of California, and the Habeas Corpus Resource Center.

**“Judicial Branch Personnel”** means members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a Judicial Branch Entity.

**“Key Personnel”** means the Contractor’s project staff members identified as “Key Personnel” in Appendix A.

**“Notice”** means a written communication from one party to another that is (a) delivered in person, (b) sent by registered or certified mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address and recipient set forth in Appendix C.

**“Option Term”** means a period, if any, through which this Agreement may be or has been extended by the Court.

**“PCC”** refers to the California Public Contract Code.

Agreement No. [REDACTED], with [REDACTED].

**“Services”** is defined in Appendix A.

**“Stop Work Order”** is defined in Appendix B.

**“Term”** comprises the Initial Term and any Option Terms.